



Adoption Policy & Guidance

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Contents	Page
Scope	2
Adoption Process	2
Section One: Pre Adoption Entitlements	3
Section Two: Adoption Leave Procedure	3
Confirming Adoption	3
Starting Adoption Leave	4
During Adoption Leave	4
Returning from Adoption Leave	5
Section Three: Adoption Leave and Pay Entitlements	5
Statutory Adoption Leave	6
Statutory Adoption Pay	6
Occupational Adoption Pay	6
Examples of Adoption Payments	6
Teachers (Burgundy Book) Adoption Payments	7
Section Four: Conditions and further information	7
Annual leave and sickness absence	7
Return to work arrangements	8
Employee protection	8

Scope

This Adoption Policy & Guidance applies to all employees of NYCC. There are some differences in entitlement depending on the conditions of service that apply, and these differences are detailed in the body of the scheme.

This scheme also applies to adopting a baby through a surrogacy arrangement.

Adoption leave and pay is available when a child is newly placed for adoption to:

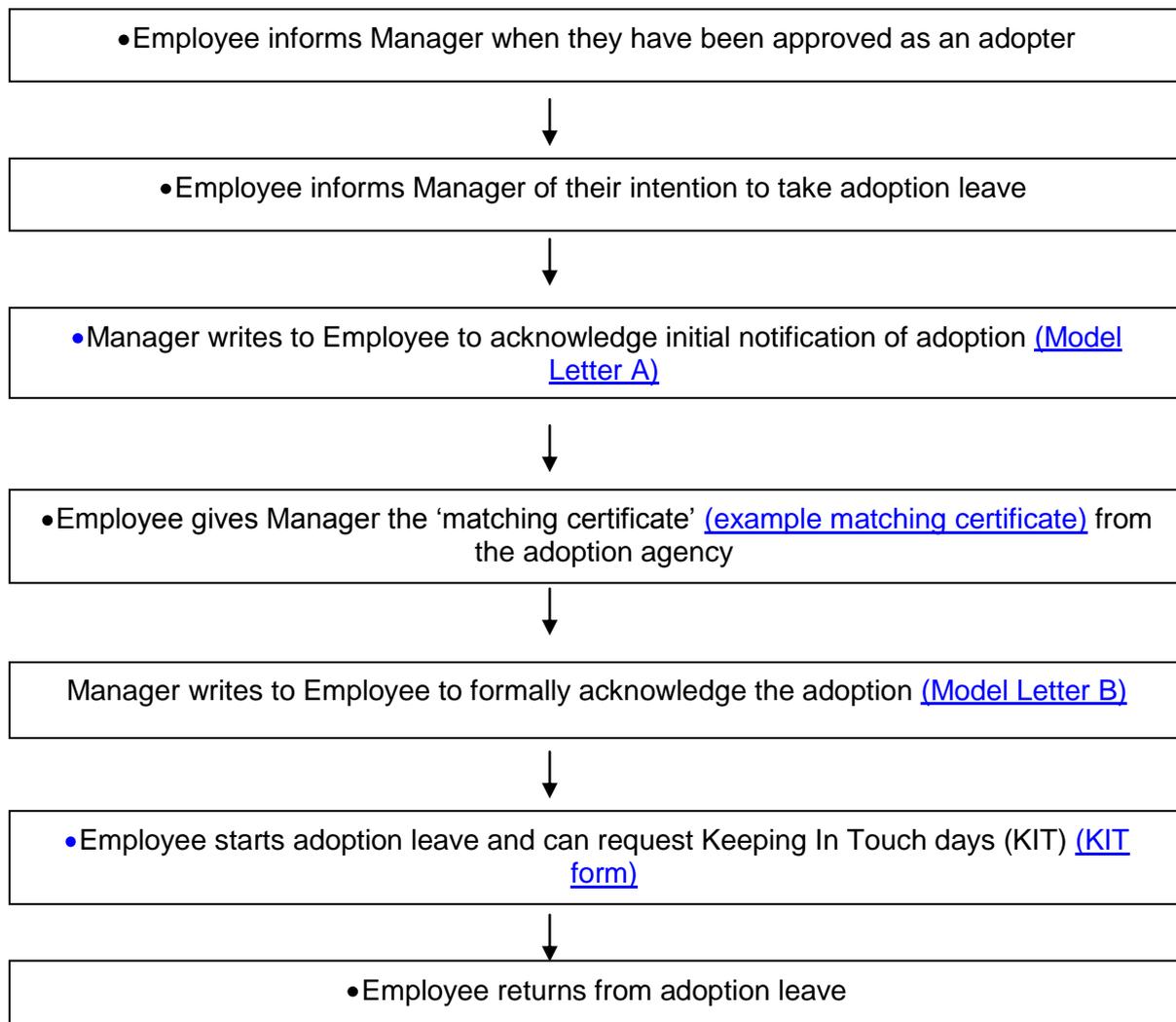
- Individuals who adopt;
- One member of a couple where a couple adopt jointly.

The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to adoption support leave and/or paternity leave and pay. Refer to the [Leave Procedure](#) for more information.

To qualify for adoption leave an employee must be newly matched with a child for adoption by an approved adoption agency. Adoption leave and adoption pay is not available where a child is not newly matched for adoption, for example when a step-parent is adopting a partner's child/children.

Only one period of leave can be taken however many children are adopted at one time.

Adoption Process



Section One – Pre Adoption Entitlements

The Authority recognises that each prospective adoptive parent is required to go through a lengthy selection process this includes attendance at preparation/training sessions, assessments meetings, pre-adoption panel, matching panel and also an introduction process with the child.

Employees going through the adoption process can apply for up to 5 days paid per year (pro rata). This pre adoption leave can be used in preparation for the adoption (as detailed above) subject to agreement by their line manager. Where possible meetings should be held in the employees own time but where this is not possible time can be granted in working hours using the pre-adoption leave entitlement.

If both adoptive parents work for the authority they would equally be eligible to apply for pre adoption leave.

Employees should talk to their manager about other leave arrangements in addition to this entitlement if they intend to adopt from overseas.

Section Two – Adoption Leave Procedure

Provided the employee complies with the notification procedures they will be entitled to 26 weeks' Ordinary Adoption Leave and 26 weeks' Additional Adoption Leave, regardless of their length of service. The total of 52 weeks is the adoption leave period and must be taken consecutively.

Confirming Adoption

The employee should tell their manager as soon as they have been approved as an adopter so that the manager can plan working arrangements. This may be before the employee has received or needs to submit their documentary evidence. The manager should respond with model [letter A](#) to acknowledge their initial notification.

The employee must inform their manager in writing of their intention to take adoption leave **within 7 days** of being notified by their adoption agency that they have been matched with a child for adoption. This is known as the notification period. They should tell their manager in writing:

- That they are adopting;
- When the child is expected to be placed with them;
- When they want their adoption leave to start.

In addition they should:

- Give at least 28 days notice of the date they expect any payments of SAP to start, if reasonably practicable;
- Declare their intention to return to work at the end of the period of Adoption Leave, to qualify for occupational adoption pay; and
- Give their manager a '[matching certificate](#)' from their adoption agency as proof of their entitlement to SAP and adoption leave. Employees should ask their adoption agency for this certificate, which will include basic information on matching and expected placement dates.

Managers will respond with model [letter B](#) within 28 days of receiving the above notification to advise the expected return date from adoption leave. This will be based on their full leave entitlement of 52 weeks unless notified otherwise.

Starting Adoption Leave

Employees can choose to start their leave on any day of the week, either:

- From the date of the child's placement; or
- From a fixed date which can be up to 14 days before the expected date of placement; or
- From a 'fixed point' to be agreed, where a child is being adopted from overseas.

If the employee's placement is delayed for any reason and they have already started adoption leave they will not be able to stop it and start again at a later date, unless it becomes a disrupted placement. If the employee plans to start adoption leave before the actual date of placement they should check the placement is to start as planned.

If the employee has started adoption leave before the placement of the child and they are subsequently notified that the placement will not be made; or, if during the employee's adoption leave the child placed with them is returned to the adoption agency or dies; then, the manager will discuss with them sympathetically an appropriate date on which to return to work. Usually in this situation the employee's adoption leave finishes 8 weeks after the end of the week in which the disruption took place, or earlier if their adoption leave was due to finish before this time. The employee should still give 28 days notice to return to work.

Changing the adoption leave start date

If the employee then wants to change the date on which their leave starts, they must give at least 28 days notice if reasonably practicable. The manager will reply in writing within 28 days to confirm their new expected date of return.

During Adoption Leave

Keeping in touch days

The employee can do 10 days' work during their adoption leave without bringing their adoption leave to an end. Working for part of a day will count as one day. They will not lose any SAP for working up to 10 days. Work is defined as any work done under their contract of employment and this may include training or any activity undertaken for the purposes of keeping in touch with their workplace.

However, NYCC cannot insist that they carry out work and equally they cannot insist that they are given work to do during this period.

Were work is doing during the adoption leave period they will continue to receive their SAP where it is due and should also be paid for any work that they do under their contract of employment. This work will be paid at the employee's hourly contractual rate and will be offset against the SAP/OAP due.

A form for recording keeping in touch days and a claims form for payment for Keeping in Touch Days are available
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 It is important to note that once an employee has used up the 10 keeping in Touch Days/sessions if they then work again they will not receive their Maternity or Adoption benefits for that week. Therefore, records must be kept to avoid this.

Reasonable contact

NYCC has a statutory right to make reasonable contact with the employee during the adoption leave period and the employee has a statutory right to make reasonable contact with their employer during the adoption leave period. The employee and employer should agree before the start of adoption leave what kind of contact will be kept during the adoption period. The reasons for this contact could include:

- How the employee might be told about changes happening in the workplace
- Any opportunities that may arise to attend work related training or keeping in touch days.
- If courtesy contact will be made to confirm return arrangements just prior to the agreed date.

Returning from Adoption Leave

Employees who intend to return to work at the end of their full adoption leave entitlement do not have to give any further notification to their manager.

Returning before the full leave entitlement

If the employee wants to return before the end of their full leave entitlement of 52 weeks they must tell their manager at least 28 days before their new intended return date.

These notice periods are the minimum required. To help managers plan cover employees should give as much notice as possible of any changes to their plans.

If the employee does not give the minimum notice, a manager can postpone the employee's return until 28 days from the date they informed them that they would like to return early, but not to a date after the adoption leave would have ended.

Additional Paternity Leave

Your partner may be entitled to Additional Statutory Paternity Pay (ASPP) if you adopt a child and are entitled to Statutory Adoption Pay. In order to be able to apply for Additional Paternity Leave and Pay the following criteria apply:

- The applicant and their partner receive notification that they are matched with a child for adoption.
- The applicant's spouse, civil partner or partner is adopting a child from overseas and the child enters Great Britain.

Further information can be found in the [Paternity and Maternity Support Leave](#)

Section Three - Adoption Leave and Pay Entitlement

Statutory Adoption Leave entitlement

Provided the employee complies with notification procedures in [confirming adoption](#) they will be entitled to 26 weeks' Ordinary Adoption Leave and 26 weeks' Additional Adoption Leave, regardless of their length of service. The total of 52 weeks is the adoption leave period and must be taken consecutively.

Statutory Adoption Pay (SAP)

SAP is paid for up to 39 weeks, starting from any day of the week. Unlike Statutory Maternity Pay, SAP is paid at the flat rate for the whole of the adoption pay period, (i.e. the first six weeks are not paid at 90% of pay).

SAP is payable if the employee has been continuously employed by NYCC for 26 weeks by the week in which they are matched with a child for adoption, and has average weekly earnings equal to or above the lower earnings limit. Adopters who have average weekly earnings below the Lower Earnings Limit for National Insurance Contributions will not qualify for SAP. Employees who are not entitled to these may be able to access other benefits, and should contact their local Jobcentre Plus, Benefits office, or adoption agency.

SAP ceases if the employee starts working for a new employer after the child has been placed, or if the placement is disrupted.

Occupational Adoption Pay (OAP)

Occupational Adoption Pay is available to employees who have completed 1 year's continuous local government service at the 11th week before the expected week of the child's placement they are entitled to occupational adoption pay as follows:

- For the first six weeks nine-tenths of a week pay offset against SAP payments.
- For employees who declare in writing that they intend to return to work will for the subsequent 12 weeks receive half a weeks pay plus SAP, where eligible, to a limit of full pay. This is paid in the understanding that they return to local authority employment for at least 3 months (excluding any period of unpaid parental leave).
 - Employees can alternatively have the equivalent amount of the 12 weeks pay paid in any other mutually agreed distribution, for example as 3/10th pay per week for the remaining 20 weeks of OAL or the amount in full when they return to work after the maternity leave period. (This is an advisable option if they are undecided whether or not to return to work). The pay arrangements should be agreed before they begin their leave.
- For the remainder of the adoption leave period employees will receive their entitlement to SAP where eligible.

Examples of Adoption Payments

Employees with less than 26 weeks' continuous service with NYCC by the week of notification of a match:

Not entitled to Statutory Adoption Pay (SAP) or occupational adoption pay.

Employees with more than 26 weeks' but less than one year's continuous service by the week of notification of a match:

May be entitled to SAP for 39 weeks; and,

Those who return to work for at least 3 months after adoption leave:

Weeks 1 – 6 90% of average earnings (offset against SAP payments).

Employees with at least one year's continuous service by the week of notification of a match:

May be entitled to SAP for 39 weeks; and,

Those who return to work for at least 3 months after adoption leave:

Weeks 1 – 6 90% of average earnings (offset against SAP payments).

Weeks 7 – 18 Half pay plus SAP (to a limit of full pay)

Weeks 19 – 39 SAP

Teachers (Burgundy Book) Adoption Payments

Generally the same provisions apply to employees under School Teachers (Burgundy Book) Conditions of Service, except they receive full pay for the first 4 weeks of adoption leave.

Teachers with at least one year's continuous service (including with other LEAs) by the week of notification of a match:

May be entitled to SAP for 39 weeks; and,

Those who return to work for at least 3 months after adoption leave:

Weeks 1 – 4 Full pay (offset against SAP payments);

Weeks 5 – 6 90% of an average week's pay (offset against SAP payments);

Weeks 7 – 18 Half pay without deduction plus SAP, to a limit of full pay.

Weeks 19 – 39 SAP

If the teacher does not return to work for at least 3 months, they will be requested to refund occupational adoption pay received weeks 7-18.

Where the employer agrees, a full-time teacher may return to work on a part-time basis for 13 weeks, or a part-time teacher may return to work on a different part-time basis for 13 weeks. The 13 week period starts from the date the teacher returns to work or the date during the school holiday on which the teacher is declared medically fit to be available to work.

Section Four - General Conditions and Information

Annual leave and sickness absence

Annual leave

Adoption Leave does not affect entitlement to annual leave. Employees will continue to accrue annual leave during both their ordinary and additional adoption leave. Where possible all leave should be taken in the current leave year but a maximum of 5 days can be carried forward to the following year and must be taken by 31st May.

Employees whose adoption leave spans two leave years are usually able to carry over 5 days of leave (pro-rata for part-time employees) in the normal way. In exceptional circumstances provisions can be made to allow employees to carry over any excess leave in to the following leave year, for example if an employee is unable to take all of the annual leave in the leave year in which the adoption leave commenced then the employee will be allowed to carry it over. For employees not returning to work, annual leave will be calculated up to the last day of employment.

Employees should therefore plan wherever possible, to take annual leave before the commencement of adoption leave and may wish to request some leave at the end of the adoption leave period. If an employee does not return to work for a period of at least three months after adoption leave, then any leave taken to which the employee was not entitled will be reclaimed.

For teachers see advice from LGE

Sickness absence

Adoption leave is not sick leave and is not taken into account in any calculation of entitlement to sick leave. Both paid and unpaid adoption leave is reckonable service for calculating entitlements under the [Attendance management procedure](#) (or equivalent).

If the employee becomes sick during their adoption pay period they are not entitled to SSP because they are receiving SAP.

Return to Work Arrangements

On returning to work during or immediately after the ordinary adoption leave period, an employee will return to the job in which they were employed on terms and conditions no less favourable than if they had not been absent. This includes the nature of the work they did and the place in which they did it. Where this is not practicable because of redundancy or reorganisation they will be offered a suitable alternative vacancy if one exists according to the Redeployment Policy and Procedure.

A employee returning during or after their additional adoption leave period is entitled to return to their original job on terms and conditions as if they had not been away unless, it is not reasonably practical for them to return to the same job, in which case they are entitled to be offered suitable alternative work.

Managers should consider any request for flexible working arrangements in accordance with the [Flexible Working Procedure](#).

If the employee cannot return to work as expected due to sickness, the usual sickness absence contractual arrangements apply, and they should tell their manager as outlined in the [Attendance management procedure](#) (or equivalent).

Employee Protection

Employees are protected from suffering detriment or unfair dismissal for reasons relating to pregnancy or adoption leave. Employees who believe they have been treated unfairly have the right to complain to an Employment Tribunal. However, an employee who believes that they have suffered detriment should raise the issue through the [Resolving Issues at Work procedure](#).

Specifically, an employee who is pregnant or on adoption leave is protected from detrimental treatment (being treated unfairly or less favourably due to an act, or deliberate failure to act by the employer) or dismissal because they:

- Have taken, or seeks to take, ordinary or additional adoption leave;
- Have taken, or seeks to take, any of the benefits of ordinary adoption leave;
- Is being made redundant during their adoption leave and has not been offered any available suitable alternative employment.

Protection includes any detrimental treatment or dismissal after they failed to return to work following ordinary or additional adoption leave where either:

- Their manager did not notify them in accordance with the statutory duties or otherwise of the date on which their adoption leave would end and they reasonably believed that their adoption leave had not ended;
- Their manager gave them less than 28 days' notice of the date their adoption leave would end and it was not reasonably practicable for them to return on that date.

Employees can claim unfair dismissal regardless of length of service if related to pregnancy or adoption leave. An employee dismissed at any time during pregnancy or adoption leave is entitled to written reasons for dismissal (whether requested or not). NYCC can dismiss employees for reasons unrelated to pregnancy, such as conduct, and any such employee must have one year's service to claim unfair dismissal.